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In The

Supreme Court of the United States

October Term, 1995

ARIZONANS FOR OFFICIAL ENGLISH AND ROBERT D. PARK,

Petitioners,

v.

STATE OF ARIZONA; MARIA-KELLEY F. YNIGUEZ; JAIME GUTIERREZ; AND ARIZONANS AGAINST CONSTITUTIONAL TAMPERING,

Respondents.

On Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit

BRIEF OF AMICI CURIAE LINGUISTIC SOCIETY OF AMERICA AND NATIONAL COUNCIL FOR LANGUAGES AND INTERNATIONAL STUDIES IN SUPPORT OF RESPONDENTS

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TABLE OF CONTENTS

Page

INTEREST OF AMICI CURIAE 1

SUMMARY OF ARGUMENT..... 4

ARGUMENT 5

I. ARTICLE 28 WILL NOT PROMOTE DEMOCRACY OR ENCOURAGE UNITY AND POLITICAL STABILITY..... 7

A. Democracy Is Advanced by the Broadest Possible Participation in Governmental Affairs; Article 28 Reduces Such Participation by Citizens Who Speak Little or No English..... 7

B. Linguistic Regulation Is Alien to American Democratic Values 9

C. International Experience Shows That Repressive Language Policies Stir Resentment Instead of Promoting Unity 13

II. ARTICLE 28 WILL NOT FOSTER A COMMON LANGUAGE..... 20

A. Immigrants Are Already Learning English Rapidly; the Rate of Acquisition of English Will Be Determined by Social and Economic Factors, Not by Article 28..... 21

B. Immigrants Are Well Aware of the Advantages of Acquiring English, Regardless of Arizona's Strict English-Only Law..... 24

TABLE OF CONTENTS – Continued

Page

C. Arizona Has a Far More Effective and Less Intrusive Means of Reaching Its Stated Goal: Teaching English to Its Residents 26

III. ARTICLE 28 WILL NOT PROTECT PUBLIC CONFIDENCE OR PREVENT DISILLUSIONMENT AND CONCERN 27

IV. ARTICLE 28 WILL NOT PROMOTE GOVERNMENTAL EFFICIENCY AND EFFECTIVENESS 29

CONCLUSION 30

TABLE OF AUTHORITIES

Page

CASES

Asian American Business Group v. City of Pomona, 716 F. Supp. 1328 (C.D. Cal. 1989) 29

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TABLE OF AUTHORITIES – Continued

Page

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Page

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Page

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Page

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INTEREST OF AMICI CURIAE

Amicus Linguistic Society of America ("LSA") is a scholarly organization, founded in 1924, whose membership consists of thousands of academic and professional linguists in the United States.[1] The object of the LSA, as expressed in its constitution, is the advancement of the scientific study of language. It is the premier organization in this country devoted to that goal. This is the only time that the LSA has filed an amicus brief before this Court.

Since the LSA's inception, many of its members have devoted their professional lives to recording, analyzing and preserving the severely threatened native languages of this continent. Arizona is especially rich in the number and diversity of indigenous languages still spoken there, including Apache, Havasupai, Hopi, Hualapai, Navajo, O'odham (Papago) and Yaqui; Navajo has the largest number of speakers of any indigenous language in the United States.[2] Arizona's law will not only have practical implications in the dealings of native peoples with the State, but sends a symbolic message undermining their efforts to preserve their languages and cultures.

From an early emphasis on indigenous languages, American linguistics has expanded its horizons by describing hundreds of other languages around the world, including sign languages of the deaf. These

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[1] Linguists who assisted with the preparation of, or commented on, this brief include Emmon Bach, Geoffrey Nunberg, Janine Scancarelli, and Elizabeth Traugott.

[2] *See generally* Bureau of the Census, Dep't of Commerce, 1990 Census of Population: Characteristics of American Indians by Tribe and Language, section 2 of 2 (1990). The census reports that Arizona has 76,954 speakers of Navajo. *Id.* at 862.

descriptive studies have further advanced our knowledge of phonetics and phonology, syntax and semantics. Perhaps more relevant to the case at bar, linguists and other language experts have learned a great deal regarding how children learn language, and how adults learn second languages. In addition, linguists have studied the many ways in which languages interact with each other, including the dynamics of bilingual and multilingual societies, the relationship of dialects to standard language, and the choices that speakers make regarding which dialect or language to speak in which situation. Perhaps most directly on point, linguists have studied how languages interact in the many speech communities within the United States.

Amicus National Council for Languages and International Studies ("NCLIS") is an umbrella organization consisting of many professional societies involved in the teaching of language.[3] Members of the NCLIS have

[3] Members include Advocates for Language Learning, American Assembly of Collegiate Schools of Business, American Association of Teachers of French, American Association of Teachers of German, American Association of Teachers of Slavic and East European Languages, American Association of Teachers of Spanish and Portuguese, American Council of Teachers of Russian, American Council on the Teaching of Foreign Languages, The American Forum for Global Education, Association of Teachers of Japanese, California Foreign Language Teachers Association, Center for Applied Linguistics, Center for Intensive Language and Culture, Central States Conference on the Teaching of Foreign Languages, Chinese Language Teachers Association, Colorado Congress of Foreign Language Teachers, Connecticut Council of Language Teachers, Florida Foreign Language Association, Foreign Language Association of Georgia, Foreign Language Association of Missouri, Foreign Language Association of

substantial knowledge about, and experience with, second language acquisition. Its members are particularly concerned by the symbolic implications of this case. Americans generally have a very poor record in learning other languages, despite the obvious advantages of doing so in an increasingly global economy. Unfortunately, "English-only" laws dampen enthusiasm for learning

North Carolina, Foreign Language Association of Virginia, Georgetown University Roundtable on Languages and Linguistics, Greater Washington Association of Foreign Language Teachers, Indiana Foreign Language Teachers Association, Illinois Council on the Teaching of Foreign Languages, International Association of Learning Laboratories, Kansas Foreign Language Association, Linguistic Society of America, Massachusetts Foreign Language Association, Michigan Foreign Language Association, Minnesota Council on the Teaching of Foreign Languages, Modern Language Association-Association of Departments of Foreign Languages, Modern Language Journal-National Federation of Modern Language, Teachers Associations, National Association for Bilingual Education, National Association of District Supervisors of Foreign Languages, National Association of Self-Instructional Language Programs, National Committee for Latin and Greek, National Council of State Supervisors of Foreign Languages, National Network for Early Language Learning, New York State Association of Foreign Language Teachers, Northeast Conference on the Teaching of Foreign Languages, Northern New England State Foreign Language Associations, Ohio Foreign Language Association, Pacific Northwest Council for Languages, Pennsylvania State Modern Language Association, Satellite Education Resources Consortium, South Atlantic Modern Language Association, Southern Conference on Language Teaching, Southwest Conference on Language Teaching, Teachers of English to Speakers of Other Languages, Tennessee Foreign Language Consortium, Texas Foreign Language Association, Washington Association for Language Teaching, and Wisconsin Association of Foreign Language Teachers.

other languages. Even worse, they may encourage Americans who already speak other languages to become monolingual speakers of English, thus depriving American businesses and organizations of a valuable linguistic resource.

In this brief, amici will apply their expertise to the question of whether Arizona's strict official English law is consistent with the United States Constitution. Specifically, the brief will focus on the justifications that have been given for the law.

Letters of consent to the filing of this brief, received from all parties, have been filed with the Clerk of this Court.

SUMMARY OF ARGUMENT

Article 28 of the Arizona Constitution lacks any reasonable justification. It cannot be rationalized on the ground that it promotes democracy or national unity. Rather than enhancing citizen participation in government, Article 28 reduces opportunities for Arizonans to interact with the State. Furthermore, limiting access to government violates American ideals of linguistic toleration, which can be traced to the founding of this nation, and which have never endangered national unity. Examples of social conflict that are popularly ascribed to linguistic differences, such as those in Canada, Belgium, or Sri Lanka, in fact demonstrate that it is not the presence of diverse languages within a nation, but rather the repression of one language by speakers of another that engenders hostility and possible disunity.

Moreover, Article 28 will not further the State's asserted interest in promoting a common language. Immigrants are learning English in much the same way and at

the same rate as they did in the past. What determines how quickly immigrants learn English is the age at which they arrive in this country, the length of time that they have been here, the quality of the State's educational system, and other factors over which Article 28 exerts no control.

Additionally, Article 28 will not protect public confidence or prevent disillusionment. Of course, there is a somewhat larger number of speakers of languages other than English in the United States than in preceding decades. Yet recent immigrants are learning English as quickly as their predecessors. Any remaining public concerns are in reality directed at the volume of recent immigration, a matter of exclusively Federal concern, or are simply xenophobic. Finally, the purported justification that Article 28 will promote efficiency is – as the State concedes – simply wrong.

None of the posited justifications for Article 28 can outweigh the substantial burdens that it places on Arizonans who seek to petition or interact with the State but speak little or no English. In fact, depriving non-English-speaking Arizonans of the opportunity to interact directly with government employees, as Article 28 does, is not rationally related to any of its purported goals.

ARGUMENT

Despite appearances, this case is not about whether a state can make English its official language. Rather, the issue is whether a state can legitimately prohibit state actors from using any other language while performing their duties. Ariz. Const. art. XXVIII ("Article 28"). Such a prohibition is especially problematic when it restrains bilingual state actors – such as Ms. Yniguez – who are

willing and able to speak another language, and who can therefore communicate more efficiently and more clearly with certain state residents in that manner. People who travel to other countries are often enormously frustrated by not being able to speak the language. For state employees like Yniguez, it is even more frustrating when they are fully capable of speaking the language of someone who seeks assistance, and could provide the needed assistance much more efficiently in another language, but are forbidden to do so.

Not only does the prohibition muzzle state officials, but it imposes substantial burdens on residents who do not speak English, or who do not speak it very well. While the number of non-English-speaking Americans is relatively small, the prohibition at issue absolutely bars them from engaging in direct communications with the State.

As this Court so aptly observed in *Meyer v. Nebraska*: "[t]he protection of the Constitution extends to all, to those who speak other languages as well as to those born with English on the tongue." 262 U.S. 390, 401 (1923). Article 28 of the Arizona Constitution favors those "born with English on the tongue," while imposing substantial burdens on those who have not yet mastered the language. Several justifications have been offered for imposing such burdens. None can withstand analysis.

I. ARTICLE 28 WILL NOT PROMOTE DEMOCRACY OR ENCOURAGE UNITY AND POLITICAL STABILITY

The most commonly cited justification for laws like Article 28 is that they will promote democracy and protect it from the dangers of linguistic and cultural separatism. Brief for Petitioners at 36-38. In actuality, Article 28 will reduce participation in the democratic process. Furthermore, arguments that Article 28 will foster unity and stability rest on misconceptions regarding the linguistic situation in other countries, and lack of knowledge about our own nation's rich multilingual tradition. While the State has a vital interest in promoting unity and democracy, Article 28 will do nothing to further those goals.

A. Democracy Is Advanced by the Broadest Possible Participation in Governmental Affairs; Article 28 Reduces Such Participation by Citizens Who Speak Little or No English

A democratic state derives its legitimacy from the consent and participation of its citizens. In President Lincoln's famous words, democracy is government "of the people, by the people, for the people."[4] It is axiomatic that unjustified limitations on citizen participation are fundamentally antidemocratic. On the other hand, a state can promote democracy by encouraging as many of its citizens as possible to vote, discuss issues of public importance, and otherwise become involved in the affairs

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[4] Abraham Lincoln, *Address Delivered at the Dedication of the Cemetery at Gettysburg (Nov. 19, 1863), in 7 The Collected Works of Abraham Lincoln* 22, 23 (Roy P. Basler ed., 1953).

of government. "[T]o facilitate and enlarge public discussion and participation in the electoral process [are] goals vital to a self-governing people." *Buckley v. Valeo*, 424 U.S. 1, 92-3 (1976).

Far from promoting democratic values, as its defenders maintain, the purpose and effect of Article 28 is to reduce citizen participation in government. Article 28 expressly provides that English is "the language of the ballot, the public schools and all government functions and actions." Art. 28 § (1)(2). It extends its scope not only to the legislative, executive, and judicial functions of the State, but also to "all political subdivisions, departments, agencies, organizations, and instrumentalities of this State, including local governments and municipalities." *Id.* § 1(3)(a)(ii). It encompasses not only statutes and ordinances, but also "programs and policies." *Id.* § 1(3)(a)(iii). And should any doubt as to its scope remain, it expressly applies to "all government officials and employees during the performance of government business." *Id.* § 1(3)(a)(iv).

Consequently, the mayor and city officials of a small rural town in Arizona where some residents still speak Spanish or Navajo or Apache are prohibited from discussing matters of public concern in any language but English. Unless there is a supervening federal mandate, state or local officials may not provide voters with election materials in other languages. Apparently, state legislators may not even address constituents in their own language, unless that language happens to be English. Furthermore, Article 28 prohibits Arizona officials from communicating with the deaf by means of American Sign

Language (which is not a variety of English[5]), unless required by Federal law.

There is absolutely no question that Article 28 will not increase participation in the democratic process. By limiting communication between the government and its citizens, Article 28 can only serve to *reduce* participation in voting and other forms of self-governance.

B. Linguistic Regulation Is Alien to American Democratic Values

The argument that Article 28 will enhance democratic values flies in the face of long-established American democratic ideals that government should not dictate what is orthodox in matters linguistic. It has always been deemed important for residents of this country to be able to speak English, as this Court recognized in *Meyer v. Nebraska*, 262 U.S. 390, 401 (1923). Yet as the Court further observed, this goal "cannot be coerced by methods which conflict with the Constitution." *Id.*

At the time of the Revolutionary War, there was a great deal of linguistic diversity in the United States. Large numbers of Germans lived in Pennsylvania, Maryland, Virginia and New York, as well as Dutch in New York and Delaware.[6] In the midwestern territories east of the Mississippi, most European inhabitants were French.[7]

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[5] *See generally* Ursula Bellugi & Edward Klima, *The Signs of Language* (1979).

[6] Nancy Faires Conklin & Margaret A. Lourie, *A Host of Tongues: Language Communities in the United States* 5 (1983); Heinz Kloss, *The American Bilingual Tradition* 11-12 (1977).

[7] Kloss, *supra*, at 164.

There was also, of course, a wide variety of American Indian languages.[8]

If the use of languages other than English were a threat to democracy, it would have been even more so when our nation was founded. At that time, there was no public school system to ensure that all children are able to speak English. The mobility of the population was limited, leading to large enclaves of speakers of non-English languages. The mainly agricultural economy would have enabled many people to work in isolated environments where English was seldom heard. And mass media, such as radio and television, were yet to be invented. Under these conditions, linguistic communities could and did maintain their native languages to a far greater extent than is possible today.

Yet none of the original thirteen states found it necessary to declare English its official language. Remarkably, this was true even in Pennsylvania, despite Benjamin Franklin's famous fears that Germans were not assimilating linguistically: "Few of their children in the Country learn English; they import many books from Germany; and of the six printing houses in the Province, two are entirely German."[9] Franklin suggested that the Germans in Pennsylvania "will soon so out number us, that . . . we . . . will not . . . be able to preserve our language, and even our Government will become precarious."[10] In a

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[8] *See generally* 10 *Current Trends in Linguistics* (Thomas A. Sebeok ed., 1973).

[9] Letter from Benjamin Franklin to Peter Collinson (May 9, 1753) *in* 4 *The Papers of Benjamin Franklin* 477, 484 (Leonard W. Labaree & Whitfield J. Bell eds., 1961).

[10] *Id.* at 485.

few years, Franklin mused, it might become necessary to use interpreters in the state Assembly, "to tell one half of our Legislators what the other half say."[11] Pennsylvania later enacted measures that would have horrified today's proponents of English-only laws. In the late eighteenth and early nineteenth century, the state published statutes and other official documents in German.[12] Pennsylvania, along with some other states, even allowed the establishment of German-language public schools during this period.[13]

As in the individual states, the founders of our nation felt no need to make English the official language of the Federal government. History has proved them correct. For example, although there were approximately 9 million German speakers on American soil in 1910, the German language in America is now virtually extinct.[14] Notwithstanding the myth that German almost became the official language of the United States,[15] neither German nor any other language has ever threatened the position of English.

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[11] *Id.* at 484.

[12] Heinz Kloss, *The American Bilingual Tradition* 143-44 (1977).

[13] *Id.* at 149-150. Similarly, during the nineteenth century, Ohio allowed the establishment of German-language public schools. *Id.* at 158.

[14] Heinz Kloss, *German-American Language Maintenance Efforts, in Language Loyalty in the United States. The Maintenance and Perpetuation of Non-English Mother Tongues by American Ethnic and Religious Groups* 206, 248-9 (Joshua A. Fishman et al. eds., 1966).

[15] *See* Shirley Brice Heath, *English in Our Language Heritage, in Language in the USA* 6, 9 (Charles A. Ferguson & Shirley Brice Heath eds., 1981) (discussing the "Muhlenberg legend").

Not only did the founders find it unnecessary to declare English the official language of their fledgling nation, but – as in the individual states – they were willing to use languages other than English for official purposes. For example, the Continental Congress had many of its proclamations translated and printed in German. It also authorized a German translation of the Articles of Confederation.[16]

Most of our nation's founders apparently believed that *any* regulation of language – whether English or another language – was antithetical to American democratic ideals. This is confirmed by the proposal of John Adams to establish the "American Academy for refining, improving, and ascertaining the English Language."[17] His efforts came to naught.[18] And when Noah Webster approached Chief Justice John Marshall for a Supreme Court endorsement of his dictionary, Justice Marshall refused, remarking that in America it was individuals rather than public bodies that dictate language use.[19]

In stark contrast to the French, who allow a national academy to banish foreign words from their language,

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[16] Heinz Kloss, *The American Bilingual Tradition* 26-7 (1977); Juan F. Perea, *Demography and Distrust: An Essay on American Languages, Cultural Pluralism, and Official English*, 77 Minn. L. Rev. 269, 284-7 (1992).

[17] Letter from John Adams to Samuel Huntington (Sept. 5, 1780), *in 7 The Works of John Adams* 249, 250 (Charles Francis Adams ed., 1852).

[18] *See* Shirley Brice Heath, *A National Language Academy?: Debate in the New Nation*, 189 Linguistics 9 (1977); Juan F. Perea, *Demography and Distrust: An Essay on American Languages, Cultural Pluralism, and Official English*, 77 Minn. L. Rev. 269, 295-303 (1992).

[19] Heath, *supra*, at 33.

Americans traditionally resist government dictates regarding language. No governmental agencies specify how we ought to spell words, for instance, even though English orthography is renowned for its inconsistencies. Thus, when President Theodore Roosevelt tried to have the Government Printing Office promote the simplified spelling of words like *tho*, *thru*, and *thoro*, he was rebuffed by Congress and subsequently limited his innovations to White House communications.[20]

Of course, as the facts of *Meyer v. Nebraska* illustrate, the American ideals of linguistic freedom have sometimes given way during times of great stress, just as other democratic freedoms sometimes do. There was a great deal of linguistic restrictionism during the anti-German hysteria surrounding World War I.[21] The same has been true at times of relatively high levels of immigration by non-English speakers, as during the last decade or two. Despite such lapses, however, regulation of language has always been inconsistent with our democratic ideals.

C. International Experience Shows That Repressive Language Policies Stir Resentment Instead of Promoting Unity

Advocates of "English-only" laws often raise the specter of Quebec, Belgium or Sri Lanka as illustrative of the dangers that lurk in a multilingual country. One might add the Basque struggle for autonomy in Spain,

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[20] Dennis E. Baron, *Grammar and Good Taste: Reforming the American Language* 95 (1982).

[21] On the historical background of *Meyer v. Nebraska*, *see* William G. Ross, *Forging New Freedoms: Nativism, Education, and the Constitution, 1917-1927* (1994).

and the ethnic strife now besetting the former Soviet republics, as well as the former Yugoslavia.[22] The assumption is that multilingual countries are inherently unstable or divided. Thus, a posited justification for Article 28 is that it will enhance unity by promoting a monolingual state.

In actuality, a common language is no guarantor of unity. Some of the bloodiest conflicts in history have taken place between groups that had no serious linguistic differences. Both the American Revolution and the Civil War pitched English speakers against other speakers of English. Nazi soldiers needed no interpreters to send German Jews to their deaths in the Holocaust. The recent genocide in the former Yugoslavia has occurred between groups – Serbs, Croats and Bosnian Muslims – who all speak a common language: Serbo-Croat.[23] And the slaughter of tens of thousands of people in Rwanda took place between two tribes – Hutus and Tutsis – speaking one language: Kinyarwanda. On a continent where many nations have dozens of languages, Rwanda is one of the few that is almost entirely monolingual.[24]

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[22] *See, e.g.*, Gutierrez v. Municipal Court, 861 F.2d 1187, 1192-93 (9th Cir. 1988) (Kozinski, J., dissenting), *vacated as moot*, 490 U.S. 1016 (1989) (discussing the "confrontation" between Anglophones and Francophones in Canada, as well as "the long-standing division between the French-speaking Walloons and the Flemish-speaking population of Belgium and . . . [t]he separatist movements by the Corsicans of France, the Basques of Spain, the Tamils of Sri Lanka, the Kurds of Turkey and Iraq, and the Sikhs of India").

[23] C. Hawkesworth, *Serbo-Croat, in 7 Encyclopedia of Language and Linguistics* 3857 (R.E. Asher ed., 1994).

[24] Ayo Bamgbose, *Language and the Nation: The Language Question in Sub-Saharan Africa* 16-17 (1991). Based on his study of African languages, Bamgbose notes that "[t]he association of multilingualism with divisiveness is unjustified, since language is only a convenient scapegoat on which the real causes of divisiveness are usually hung." *Id.* at 7.

Even if one accepts the premise that monolingualism promotes unity, artificially creating linguistic homogeneity by discouraging or even banning use of other languages often results instead in resistance and physical conflict.[25] Linguistic repression tends to ferment nationalism rather than appease it.

The Russian Empire attempted to use the Russian language to unify the diverse peoples within its territory as part of the policy: "One emperor, one religion, one language."[26] Although the Bolsheviks had a more progressive language policy when they first established their regime, they soon also began to promote the Russian language among the many linguistic minorities in the Soviet Union, with the ultimate aim of making Russian the language of a new Soviet nationality.[27] As current events have amply demonstrated, those coercive policies created at best a forced sense of unity. That compelled unity has disintegrated as republics such as the Ukraine,

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[25] *See* Dennis Baron, *The English-Only Question: An Official Language for Americans?* 180 (1990) ("Generally speaking, linguistic friction and violence occur around the globe not where language rights are protected, but where they have been suppressed.").

[26] Uriel Weinreich, *The Russification of Soviet Minority Languages*, 2 Probs. of Communism, no. 2, at 46 (1953).

[27] *See* Abdurakhman Avtorkhanov, *The Communist Party Apparatus* 318-22 (1966); Michael Bruchis, *The USSR: Language and Realities* 189-90 (1988); R.E. Weiner, *70 Languages Equal and Free?*, 6 Ariz. J. Int'l & Comp. L. 73 (1989).

Georgia and Lithuania left the union, and smaller nationalities such as the Chechens chafe at the Russian bit.

The situation in Canada can also be understood only against the background of history. Although both French and English have official status in Canada, the French language, and by extension its speakers, was long considered inferior to English. A royal commission reported in the 1960s that Francophones were below the Canadian average in socioeconomic terms.[28] Furthermore, the federal capital, federal administration, and armed services functioned almost entirely in English.[29] The commission concluded that French Canadians had achieved second-class status throughout Canada, even in Quebec.[30]

As several observers have noted, the true problem in Quebec is not official bilingualism, but the sense of legal and economic inferiority felt by Quebeckers.[31] Or as another commentator has remarked: "Separatist tendencies grow in Quebec in direct proportion to the perception that French-speaking Quebeckers are getting a raw deal from Anglophone Ottawa."[32] Only in the last few

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[28] 3 Royal Commission on Bilingualism and Biculturalism. Report. 61 (1969).

[29] 1 *id.* at 117-20 (1967); 3 *id.* at 294 (1969).

[30] 3 *id.* at 61. *See also* Milton J. Esman, *The Politics of Official Bilingualism in Canada, in Language Policy and National Unity* 45, 46 (William R. Beer & James E. Jacob eds., 1985).

[31] Hugo Baetens Beardsmore & Roland Willemyns, *Comment*, 60 Int'l J. Soc. Language 117, 121 (1986); Pierre van den Berghe, *The Ethnic Phenomenon* 211 (1981).

[32] Joseph E. Magnet, *Canadian Perspectives on Official English, in Perspectives on Official English: The Campaign for English as the Official Language of the USA* 53, 55 (Karen L. Adams & Daniel T. Brink eds., 1990).

decades have efforts been made to equalize the situation,[33] but by now it may be too late to heal the rift.

The situation is similar in Belgium, where a minority of the population natively speaks French (the Walloons) and the majority speaks Dutch (the Flemings). Historically, linguistic discord in Belgium arose from efforts by French speakers to dominate their Flemish countrymen.[34] Baetens Beardsmore and Willemyns observe:

> In spite of the constitutional equality of French and Dutch since the founding of the Belgian state in 1830, the de facto supremacy of French for over a century led to the statistical majority of Dutch-speakers in the country being downgraded to second-rate status within the national entity. The tensions engendered by this anomalous situation are revealed by the long and at times violent struggle lasting almost 150 years, of the Dutch-speaking part of the population to achieve equal linguistic status with their French-speaking compatriots, who were, moreover, the statistical minority. In other words, it is not bilingualism per se that has been at the origin of such tensions, but lack of equality for a statistical majority of the indigenous population.[35]

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[33] *See, e.g.* Joseph Magnet, *Language Rights: Canada's New Direction*, 39 U. New Brunswick L. J. 1 (1990) (discussing Official Languages Act of 1969).

[34] Matthias Hartig, *The Language Situation and Language Policy in Belgium, in Language Policy and National Unity* 67, 70 (William R. Beer & James E. Jacob eds., 1985).

[35] Hugo Baetens Beardsmore & Roland Willemyns, *Comment*, 60 Int'l J. Soc. Language 117, 121 (1986) (citations omitted).

In like fashion, the ethnic dispute in Sri Lanka is attributable in large part to Tamil feelings that their ethnicity and language were discriminated against by the majority Sinhalese. Ethnic relations on Sri Lanka worsened substantially in 1956 when the island enacted a "Sinhalese Only" law requiring all government officials to be able to speak the Sinhalese language (without requiring Sinhalese to learn the language of the Tamils). Consequently, many Tamils lost their government jobs.[36] Furthermore, like Article 28, the "Sinhalese only" law no doubt made it much more difficult for Tamils to interact with the Sinhalese-speaking government, something that would increase rather than reduce tensions.

The Basque separatist movement began as a protest against the repressive policies of Spanish dictator Francisco Franco, who attempted to banish the Basque and Catalan languages in favor of Spanish. The Franco policy has been characterized as "most drastic and oppressive attempt at unity in Spain."[37] Now that Spain has become a democracy in which Basques have substantial linguistic freedom, Basque terrorism seems to have become a thing of the past.

To sum up, using the words of Herbert Kelman: "language is a uniquely powerful instrument in unifying a diverse population."[38] Kelman warns, however, that

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[36] Thiru Kandiah, *Comment*, 60 Int'l J. Soc. Lang. 183 (1986); John-Thor Dahlburg, *Bitter Ethnic Struggle Sinks Roots Deeper in Sri Lanka*, L.A. Times, July 10, 1995 at A-1, A-6.

[37] Juan Cobarrubias, *The Protection of Linguistic Minorities in the Autonomous Communities of Spain*, in *Langue et Droit [Language and Law]* 399, 409 (P. Pupier & J. Woehrling eds., 1989).

[38] Herbert C. Kelman, *Language as an Aid and Barrier to Involvement in the National System, in Can Language Be Planned? Sociolinguistic Theory and Practice for Developing Nations* 21, 21 (Joan Rubin & Björn H. Jernudd eds., 1971).

when linguistic unity does not occur naturally, attempts to compel unity by promoting the language of a dominant group may unintentionally foster divisiveness. He cautions that "the *deliberate* use of language for purposes of national unity may – at least in a multiethnic state – have more disruptive than unifying consequences."[39] Forcing a common language on an unwilling population may come at great cost: "the probable loss in the regime's perceived legitimacy and the probable increase in social unrest."[40]

The consequences of discouraging or suppressing the use of a particular language are little different from the consequences of suppressing the content of speech. As stated by Thomas Emerson, "[s]uppression not only is ineffective in promoting general agreement or stability, but hinders the process by engendering hostility, resentment, fear, and other divisive forces."[41] *See also West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 641 (1943).

In contrast to these repressive regimes, our country's relatively tolerant policy towards those who speak languages other than English has resulted in a type of linguistic unity that the tsars and Soviet leaders could only dream of. The 1990 census revealed that among the population of the United States above the age of five, only about three percent do not speak English well or very

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[39] *Id.*

[40] *Id.* at 37.

[41] Thomas I. Emerson, *The System of Freedom of Expression* 44 (1970).

well.[42] The carrot is obviously working much better than the stick.

Article 28 will not promote democracy, nor will it unify the people of Arizona. At best, it might encourage immigrants to Arizona to learn English somewhat more quickly. Yet, as we shall see below, it will not significantly advance even this more modest goal.

II. ARTICLE 28 WILL NOT FOSTER A COMMON LANGUAGE

A more sophisticated justification for Article 28 is that it will promote the adoption in Arizona of a common language, which just happens to be English. This argument avoids the pitfalls encountered above: the false notion that limiting the ability of residents to communicate with the government or to vote will promote democracy. Rather, it rests on the premise that the State has an interest in promoting a common language through which it can interact with its citizens, and that Article 28 will advance that interest. *See* Brief Amicus Curiae of U.S., Inc., in Support of Petition for Writ of Certiorari at 3. Even if one assumes that the State has a legitimate interest in fostering a common language, however, Article 28 does not rationally further that goal.

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[42] Bureau of the Census, Dep't of Commerce, 1990 Census of Population: Social and Economic Characteristics, United States, table 13, at 13.

A. Immigrants Are Already Learning English Rapidly; the Rate of Acquisition of English Will Be Determined by Social and Economic Factors, Not by Article 28

To justify Article 28 as promoting a common language, its proponents would have to demonstrate that it will increase the rate at which English is acquired by immigrants living in Arizona. In reality, immigrants are learning English at a rapid pace. Article 28 will not accelerate the process of English acquisition, which is governed by factors unrelated to the State's official language.

Research on language shift debunks the oft-repeated fear of the English-only movement: that immigrants (primarily Spanish speakers) are not adopting English quickly enough and that, like the Francophones of Quebec, they will soon be clamoring for a separate, or at least a bilingual, state. In reality, a recent Rand Corporation study has shown that Latinos follow the classic multi-generational shift to English. About half of immigrants born in Mexico who are permanent residents of the United States speak good English, and less than a quarter speak only Spanish. In the first generation of Mexican-Americans born in the United States, over 90% are proficient in English. By the second native generation, over half speak only English.[43]

A similar study by Calvin Veltman confirms that there is "very rapid movement to English on the part of Spanish language immigrants."[44] He also found that

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[43] Kevin F. McCarthy & R. Burciaga Valdez, *Current and Future Effects of Mexican Immigration in California: Executive Summary* 27-28 (1985).

[44] Calvin Veltman, *The Future of the Spanish Language in the United States* 44 (1988).

Hispanic immigrants shift from Spanish to English in two or three generations.[45] In fact, Veltman concludes, there is a substantial Spanish-speaking community in the United States only because of continued immigration from Spanish-speaking countries, not because Latinos refuse to learn English.[46] A 1995 study at the University of Southern California, based on the 1990 census, confirms the conclusions of the Rand and Veltman research.[47]

Perhaps the most important and obvious factor correlated to ability of immigrants to speak English is, therefore, how long they have lived in the United States.[48] Traditionally, the first generation maintains the mother tongue and learns English to a limited extent; the second generation is bilingual (generally with English dominance), and the third is typically monolingual in English.[49] While individuals and ethnic groups differ somewhat, recent immigrants to the United States, including Spanish speakers, are adhering to this classic model by switching to English in two or three generations.

Another important factor is the age of exposure to English. Very young children are heavily influenced by

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[45] *See id.* at 3.

[46] *See id.* at 109.

[47] Dowell Myers, *The Changing Immigrants of Southern California* 17-20 (Research Report No. LCRI-95-04R, Lusk Center Research Institute, School of Urban and Regional Planning, University of Southern California, 1995).

[48] *See* Calvin Veltman, *The Future of the Spanish Language in the United States* 40 (1988).

[49] Fernando Peñalosa, *Introduction to the Sociology of Language* 175-6 (1981).

the linguistic situation in the home, where immigrant parents typically speak their native languages. But once children attend school, they begin to learn English. Exposure to English increases as they move up the educational ladder and enter the workforce. Conversely, shift from one language to another is less likely after people reach their thirties and forties.[50]

The tendency for younger immigrants or children of immigrants to acquire English more quickly than their elders is related to findings by linguists that people generally learn a second language more readily when they are young. One study, for example, found that those who immigrate to the United States between the ages of three and seven acquire English language skills equivalent to native born children. Those who arrive between the ages of eight and fifteen have greater difficulties, while those arriving between the ages of seventeen and thirty-nine have the greatest difficulties of all.[51]

Socio-economic factors are also important determinants for the rate of English acquisition. There is a direct correlation between ability to speak English and higher

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[50] Calvin Veltman, *Language Shift in the United States* 20 (1983).

[51] The research is summarized in Steven Pinker, *The Language Instinct: How the Mind Creates Language* 290-91 (1994).

income levels.[52] As shown in greater detail below, immigrants are well aware of the economic and other benefits of learning English.

In light of these and other social and economic forces, Arizona's prohibition against official use of other languages will have virtually no effect. Scholars generally agree that laws favoring English do not cause immigrants in the United States to became Anglicized. As Heinz Kloss phrased it, the nationalities were assimilated not by governmental coercion, but rather "by the absorbing power of the highly developed American society."[53]

B. Immigrants Are Well Aware of the Advantages of Acquiring English, Regardless of Arizona's Strict English-Only Law

Article 28 is not necessary to encourage immigrants to adopt our common language; speakers of other languages in Arizona and elsewhere are already quite cognizant of the need to learn English. For example, the Phoenix Union High School District has classes devoted to teaching English for Speakers of Other Languages. Students must often fight for limited space, and some class locations have a six-month waiting list.[54] But they

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[52] Kenji Hakuta, *Mirror of Language: The Debate on Bilingualism* 167 (1986). *See also* Jon Amastae, *Official English and the Learning of English, in Perspectives on Official English: The Campaign for English as the Official Language of the USA* 199, 203 (Karen L. Adams & Daniel T. Brink eds., 1990) (observing that among Spanish speakers, English dominance tends to rise with socio-economic status).

[53] Heinz Kloss, *The American Bilingual Tradition* 283 (1977).

[54] Barbara Yost, *Immigrants on Waiting List for English Classes; U.S. Newcomers on Track to Crack Language Barrier*, The Arizona Republic, Oct. 29, 1995, at G9.

are eager to learn English. Mikhail Urikh, originally from the Ukraine, remarks: "I need (to) learn English because I can't read newspaper."[55] Anna Miksa, from Serbia, wants to speak English better so that she can talk to Americans and "know what's going on in the United States."[56] Similar thoughts were expressed by Van Lam, recently from Vietnam: "I very want to learn English because it's important to me. I can speak to everybody. I can get a better job."[57] A teacher summed up the attitudes of her students: immigrants do not need to be forced to learn English; they want to communicate.[58] In fact, immigrants are so eager to learn English that the demand for classes often outstrips the supply.[59]

The punitive approach of Article 28 is not necessary to convince immigrants of the advantage of knowing English. Children with limited English proficiency will learn to speak it in school. Their parents will probably acquire it somewhat more slowly and less fluently. And their grandparents, if they entered this country at a late

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[55] *Id.*

[56] *Id.*

[57] *Id.*

[58] *Id.*

[59] *See, e.g.*, Jon Amastae, *Official English and the Learning of English, in Perspectives on Official English* 199, 201 (Karen L. Adams & Daniel T. Brink eds., 1990) (commenting on the large numbers of Spanish speakers who register for adult education programs teaching English as a Second Language); Laura Randall, *America's Ethnic Diversity Spawns Language Conflicts*, L.A. Times, Sept. 5, 1993, at A-4, A-5 (noting that there are large numbers of Latinos and other minorities who are clamoring to learn English, but that waiting lists and teacher shortages plague English-language centers across the country).

age, may not learn much at all. That is simply the immigrant experience, related to differences in people's ability and opportunity to acquire new languages. Article 28 will do nothing to change it.

C. Arizona Has a Far More Effective and Less Intrusive Means of Reaching Its Stated Goal: Teaching English to Its Residents

The justifications for Article 28 fade even more in light of the fact that Arizona already has a fully constitutional, easily implemented, and currently funded means of advancing widespread knowledge of a common language: education. While other factors that encourage English acquisition are virtually impossible for the State to control, Arizona is well within its authority in requiring that children attend school. *Wisconsin v. Yoder*, 406 U.S. 205, 213 (1972). Furthermore, Arizona can and does require that children learn English while there. Ariz. Rev. Stat. Ann. § 15-752 (1991).

As long as the public educational system teaches English to all the State's children, the State's goal of fostering a common language will invariably be met.[60] In fact, this Court has held that public school systems must effectively teach children to speak English, noting that "[b]asic English skills are at the very core of what these public schools teach." *Lau v. Nichols*, 414 U.S. 563, 566 (1974). Studies have shown that immigrant children can

[60] Unfortunately, some of the same xenophobic forces that have sponsored measures such as Article 28 have recently advocated excluding immigrant children who are illegally in this country from attending public schools. Such a policy would create the very real possibility of a foreign enclave in the United States where few people speak English.

quickly acquire English in school.[61] Arizona thus has at its ready disposal a means of reaching its stated goal that is both far more effective than Article 28, and does not require trampling on anyone's constitutional rights.

III. ARTICLE 28 WILL NOT PROTECT PUBLIC CONFIDENCE OR PREVENT DISILLUSIONMENT AND CONCERN

Proponents of Article 28 argued before the Ninth Circuit that the measure is necessary to protect public confidence in the government and prevent "disillusionment and concern." The public's lack of confidence and concern would apparently arise because recent immigrants are not acquiring English quickly enough, or wish to establish non-English-speaking enclaves within Arizona, or to make Arizona an officially multilingual state. These fears, as has been shown above, are simply not supported by the evidence.

In actuality, much to the dismay of many linguists, the assimilating power of the American educational system, mass media, and economy, to mention just some factors, is so strong that most immigrants, as well as many American Indians, are not only acquiring English, but are abandoning their native languages in the bargain. This phenomenon is now so well documented that it has been given a name: *subtractive bilingualism*, in which acquisition of a second language replaces the first, rather

[61] Calvin Veltman, *Language Shift in the United States* 62-67 (1983).

than adding a language to the speaker's linguistic repertoire.[62] Linguist Joshua Fishman, one of the world's leading experts on bilingualism and language policy, expressed it thus:

> Without either constitutional or subsequent legal declaration or requirement that English is the official (let alone national) language, a complex web of customs, institutions, and programs has long fostered well-nigh exclusive reliance upon English in public life. The result of two centuries of the foregoing is that literally hundreds of millions of Americans have been led, cajoled, persuaded, embarrassed into, and forced to forget, forego, and even deny . . . their mother tongues."[63]

If Arizona citizens have cause to be dismayed and concerned, it should not be because a few older immigrants, or Havasupai who have spent their lives in their homeland in the Grand Canyon, feel more comfortable dealing with a sympathetic government official in a language other than English. Rather, they should be concerned that virtually all descendants of immigrants eventually lose the ability to speak their ancestral languages, depriving America of a tremendous opportunity to be more competitive internationally. And they should be dismayed that America's indigenous languages are disappearing at a rapid rate, cutting off an important link to the original cultures of this continent. There is simply no reasonable basis for fears or concerns that immigrants

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[62] *See, e.g.*, Suzanne Romaine, *Bilingualism* 107-8 (1989).

[63] Joshua Fishman, *Language Policy: Past, Present, and Future, in Language in the USA* 516, 517 (Charles A. Ferguson & Shirley Brice Heath eds., 1981).

are not learning English. To the contrary, linguistic assimilation in the United States is working only too well.

This is not to say that people are not often fearful of, or concerned about, or simply annoyed by, the use of foreign languages. The relatively large levels of immigration during the past decade or two, accompanied by a high growth rate among recent arrivals, has led to a comparatively large population of immigrants and their children, and thus a substantial population of speakers of other languages. If the disillusionment or concern of supporters of Article 28 arises from the greater number of immigrants in our country recently, an official English law is obviously not a rational response. Immigration is a Federal question, and those concerned by it are free to seek changes in Federal immigration policy.

The only real "concerns" that Article 28 can address are xenophobic fears or dislike of other languages and their speakers. Such sentiments seem to have motivated several cities in the Los Angeles area to restrict business signs containing non-Roman scripts. *See Asian American Business Group v. City of Pomona*, 716 F. Supp. 1328 (C.D. Cal. 1989) (invalidating ordinance that required local business signs using "foreign alphabetical characters" to devote at least one-half of the sign to "advertising copy in English alphabetical characters"). Clearly, however, fear or dislike of foreign languages and orthographic systems, or foreign customs, no matter how much "disillusionment" they cause, does not justify their repression.

IV. ARTICLE 28 WILL NOT PROMOTE GOVERNMENTAL EFFICIENCY AND EFFECTIVENESS

There is no serious argument to be made that Article 28 promotes the efficiency of the State government. As

long as there are residents of Arizona who do not speak English very well and need to interact with the government, their communications will invariably be more efficient if the relevant state official speaks the language of the affected residents. The defendants below conceded this very obvious point. Plaintiff's and Defendants' Statement of Stipulated Facts 15-17, attached to Brief in Opposition [to Petition for Writ of Certiorari] of Respondent Yniguez.

CONCLUSION

The justifications offered in support of Article 28 disappear upon closer analysis. At the same time, its burdens are substantial, because Article 28 will sever all direct communications between state officials and residents who speak limited or no English. The judgment of the Court of Appeals for the Ninth Circuit should therefore be affirmed.

Respectfully submitted,

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